

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

09	ESPERANZA DIAZ DEL CASTILLO,	)	Case No. 05-1122-JLR-JPD
10	Plaintiff,	)	
11	v.	)	
12	WASHINGTON STATE DEPARTMENT OF	)	ORDER DENYING
13	SOCIAL AND HEALTH SERVICES et al.,	)	PLAINTIFF'S MOTION FOR
14	Defendants.	)	APPOINTMENT OF COUNSEL

Plaintiff is proceeding *pro se* and *in forma pauperis* in this 42 U.S.C. § 2000(e) employment discrimination suit. Plaintiff has filed a proposed complaint that alleges, *inter alia*, that she was the victim of racial, gender, and national origin discrimination, that she endured a hostile work environment, and that she was retaliated against. Dkt. No. 3. This matter comes before the Court on plaintiff's motion for appointment of counsel. Dkt. No. 4. Having reviewed plaintiff's motion, complaint, and supporting materials, the Court DENIES plaintiff's motion for appointment of counsel. Dkt. No. 4.

A. Appointment of Counsel. Although the Court possesses the authority to appoint counsel in an employment discrimination suit, plaintiffs have no absolute right to such an appointment. 42 U.S.C. § 2000(e)(5)(f)(1)(B); *Ivey v. Board of Regents of the University of Alaska*, 673 F.2d 266, 269 (9th Cir. 1982) (internal citations omitted). Rather, the decision to

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01 appoint counsel is left to the sound discretion of the Court. *Johnson v. U.S. Dept. of*  
02 *Treasury*, 939 F.2d 820, 824-25 (9th Cir. 1991). Three factors are relevant to the Court's  
03 determination of whether to appoint counsel: (1) the plaintiff's financial resources; (2) the  
04 efforts made by the plaintiff to secure counsel on her own; and (3) the merits of the plaintiff's  
05 claim. *Id.* (citing *Ivey*, 673 F.2d at 269).

06 1. Plaintiff's Financial Resources. Plaintiff satisfies the financial requisite for  
07 appointment of counsel. A movant's ability to afford counsel is measured by a more lenient  
08 standard than that required to qualify for *in forma pauperis* status. *See Ivey*, 673 F.2d at 269.  
09 Here, plaintiff has been granted permission to proceed *in forma pauperis*, Dkt. No. 2, and has  
10 therefore demonstrated that she does not have the financial resources to independently fund  
11 her suit.

12 2. Plaintiff's Efforts to Secure Counsel. Plaintiff has demonstrated that she has  
13 made efforts to secure counsel. Plaintiffs are required to perform a reasonably diligent effort  
14 under the circumstances to obtain counsel. *Bradshaw v. Zoological Society of San Diego*, 662  
15 F.2d 1301, 1318 (9th Cir. 1981); *Ivey*, 673 F.2d at 269. Here, plaintiff's motion indicates that  
16 she has sought assistance from eleven attorneys over the course of the last fifteen months.  
17 This indicates that she has made a reasonably diligent effort to secure counsel.

18 3. Merits of Claim. Plaintiff has not demonstrated that the merits of her case  
19 warrant appointment of counsel. Plaintiff's complaint provides the Court with few facts that  
20 indicate her case has merit. To the contrary, her complaint simply asserts that she was  
21 discriminated and retaliated against during a six month probationary period. She provides no  
22 further description of the facts and circumstances of the alleged discrimination and thus  
23 leaves the Court with little evidence that her claim is meritorious.

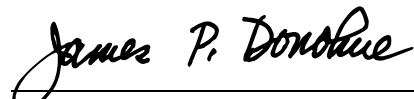
24 The Equal Employment Opportunity Commission's ("EEOC") failure to find a  
25 violation of plaintiff's rights casts further doubt on the merits of plaintiff's case. EEOC  
26 evaluations of an employment discrimination claim are considered probative of the merits for

01 purposes of appointment of counsel. *Bradshaw*, 662 F.2d at 1309, 1319-20 (indicating that  
02 EEOC determinations that a case has merit ordinarily require no further inquiry for purposes  
03 of appointment of counsel); *see also Caston v. Sears, Roebuck & Co.*, 556 F.2d 1305, 1308  
04 (5th Cir.1977) (finding EEOC investigations highly probative of a case's merits for purposes  
05 of appointing counsel). Here, the EEOC investigated plaintiff's claim and "was unable to  
06 conclude that the [plaintiff] establishe[d] violations of the statutes." Dkt. No. 3. Without  
07 more, the Court agrees and denies plaintiff's motion for appointment of counsel. Dkt. No. 4.  
08

09 B. Plaintiff's Obligation to Serve. The Clerk is directed to send a copy of this Order to  
10 plaintiff, and to issue summonses to plaintiff to enable proper service of the complaint on the  
11 appropriate parties. **Plaintiff shall note that it is her responsibility to properly serve**  
12 **copies of the complaint along with appropriate summonses as required by Rule 4 of the**  
13 **Federal Rules of Civil Procedure.**

14 The Clerk shall direct copies of this Order to plaintiff, to counsel for defendant, and to  
15 the Honorable James L. Robart.

16 DATED this 18th day of July, 2005.

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19 JAMES P. DONOHUE  
20 United States Magistrate Judge  
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